

FILED

JAN 11 2013

Clerk, U S District Court
District Of Montana
Billings

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

BARRY W. MILLS,

Plaintiff,

vs.

**FERGUS COUNTY SHERIFF'S
DEPARTMENT,**

Respondent.

Case No. CV-12-146-BLG-RFC

**ORDER ADOPTING FINDINGS
AND RECOMMENDATIONS OF
U.S. MAGISTRATE JUDGE**

On December 20, 2012, United States Magistrate Judge Carolyn Ostby entered Findings and Recommendation. Magistrate Judge Ostby recommends the Court dismiss this matter.

Upon service of a magistrate judge's findings and recommendation, a party has 14 days to file written objections. 28 U.S.C. § 636(b)(1). In this matter, no party filed objections to the December 20, 2012 Findings and Recommendation. Failure to object to a magistrate judge's findings and recommendation waives all objections to the findings of fact. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1999). However, failure to object does not relieve this Court of its burden to

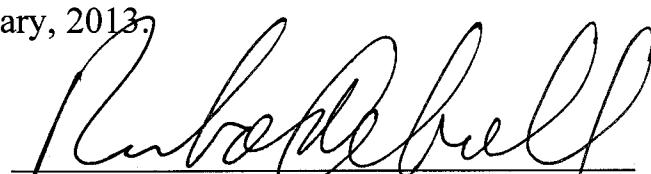
review de novo the magistrate judge's conclusions of law. *Barilla v. Ervin*, 886 F.2d 1514, 1518 (9th Cir. 1989).

Petitioner submitted a petition for writ of habeas corpus under 28 U.S.C. § 2254 on November 15, 2012. That same day, the Clerk of Court sent Mills a letter explaining that he must either pay the \$5.00 filing fee or move to proceed in forma pauperis. Mills did not respond.

After an extensive review of the record and applicable law, this Court finds Magistrate Judge Ostby's Findings and Recommendation are well grounded in law and fact and adopts them in their entirety.

IT IS ORDERED that this matter is **DISMISSED** for failure to pay the filing fee or file a motion to proceed in forma pauperis. A certificate of appealability is **DENIED** because 28 U.S.C. § 1914 plainly requires a filing fee of \$5.00 and Mills has not moved to proceed under 28 U.S.C. § 1915. The Clerk of Court is directed to enter by separate document a judgment of dismissal.

DATED the 11 day of January, 2013.



RICHARD F. CEBULL
UNITED STATES DISTRICT JUDGE